UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA

CARLOS RENE LEIVA TROCHEZ, Petitioner, v. JOHN TSOUKARIS, Field Office Director of Enforcement and Removal Operations, ATLANTA Field Office, Immigration and Customs Enforcement; MARKWAYNE MULLIN, Secretary, U.S. Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; TODD BLANCHE, U.S. Attorney General; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; JASON STREEVAL, Warden of STEWART DETENTION CENTER, Respondents.	Case No. **PETITION FOR WRIT OF HABEAS CORPUS**

INTRODUCTION

1. Petitioner Carlos Rene Leiva Trochez brings this petition for a writ of habeas corpus to enforce his statutory and constitutional right to a bond hearing before an Immigration Judge under INA § 236, 8 U.S.C. § 1226. Petitioner is currently in the physical custody of Respondents at the Stewart Detention Center in Lumpkin, Georgia. Although DHS now treats Petitioner as subject to mandatory detention under INA § 235, that characterization is legally incorrect. Petitioner was not an "arriving alien" and has never been held in expedited removal custody. Rather, Petitioner entered the United States as an unaccompanied minor, was placed in the custody of the Office of Refugee Resettlement, and was formally released to a family sponsor in 2004—terminating any § 235 detention authority decades ago. Since that release, Petitioner has lived continuously inside the United States and is now unlawfully detained without access to the individualized bond hearing Congress required.

2. The Immigration Court at Stewart Detention Center has declined jurisdiction to conduct bond hearings for unlawful entrants, notwithstanding the plain text of § 1226 and the overwhelming body of federal caselaw rejecting DHS's effort to treat long-present noncitizens as perpetually detained under § 1225. DHS's position collapses the statutory distinction between inspection-related detention and post-entry civil detention and asserts permanent mandatory detention authority over individuals like Petitioner who were released into the United States years ago. As a result, what is ordinarily a straightforward statutory safeguard—a discretionary bond hearing before an Immigration Judge—has been transformed into a procedural dead-end, requiring this Court once again to order the agency to provide the very hearing the INA mandates.

JURISDICTION

3. Petitioner is in the physical custody of Respondents. Petitioner is detained at the STEWART DETENTION CENTER in LUMPKIN, GEORGIA. Exhibit 1, Detainee Locator

4. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

5. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

VENUE

6. Pursuant to Braden v. 30th Judicial Circuit Court of Kentucky, 410 U.S. 484, 493-500 (1973), venue lies in the United States District Court for the Middle District of Georgia, the judicial district in which Petitioner currently is detained.

7. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the MIDDLE DISTRICT OF GEORGIA.

REQUIREMENTS OF 28 U.S.C. § 2243

8. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, Respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." Id.

9. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

PARTIES

10. Petitioner CARLOS RENE LEIVA TROCHEZ is alleged to be a citizen of Honduras who is in immigration detention at Stewart Immigration Detention Center under the auspices of the Stewart Immigration Court in Lumpkin, Georgia, where Respondents continue to require a Federal District Court Order before they will grant a bond hearing.

11. Respondent JOHN TSOUKARIS is the Director of the Atlanta Field Office of ICE's Enforcement and Removal Operations division; however, on information and belief, the DHS is rotating their Field Office Director without publishing a schedule of rotation. As such, JOHN TSOUKARIS or his unknown, unannounced provisional replacement is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He or his acting counterpart is named in his or her official capacity.

12. Respondent MARKWAYNE MULLIN is the Secretary of the Department of Homeland Security. He is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Mr. Mullin has ultimate custodial authority over Petitioner and is sued in his official capacity.

13. Respondent Department of Homeland Security (DHS) is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.

14. Respondent TODD BLANCHE is the Attorney General of the United States. He is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates is a component agency. He is sued in his official capacity.

15. Respondent Executive Office for Immigration Review (EOIR) is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including for custody redeterminations in bond hearings.

16. Respondent, Warden Jason Streevalis, is employed by the private, for-profit detention corporation contracted by the Government as an agent to confine immigrants at Stewart Detention Center, where Petitioner is detained. He has immediate physical custody of Petitioner. He is sued in his official capacity.

CLAIMS FOR RELIEF

COUNT I
Violation of the INA and Bond Regulations

17. Petitioner incorporates by reference the allegations of fact set forth in preceding paragraphs.

18. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA. Specifically, under the heading of "Apprehension, Custody, and Detention of [Noncitizens]," the agencies explained that "[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who

entered without inspection) will be eligible for bond and bond redetermination." 62 Fed. Reg. at 10323 (emphasis added). The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing regulations.

19. Nonetheless, pursuant to *Matter of Yajure Hurtado*, EOIR has a policy and practice of applying § 1225(b)(2) to individual like Petitioner.

20. The continued application of § 1225(b)(2) to Petitioner renders exhaustion of remedies futile and unlawfully mandates his continued detention, violating 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

COUNT II
Violation of Due Process

21. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

22. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

23. Petitioner has a fundamental interest in liberty and being free from official restraint.

24. The government's detention of Petitioner without a bond redetermination hearing to determine whether he is a flight risk or danger to others violates his right to due process.

COUNT III
Violation of Statutory Exemption for Unaccompanied Minors from Expedited Removal

25. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

26. Congress has expressly excluded unaccompanied alien children from the expedited removal and mandatory detention regime set forth in INA § 235(b)(1). See 8 U.S.C. § 1232(a)(5)(D). Except under limited circumstances involving certain contiguous-country nationals, unaccompanied alien children may not be placed into expedited removal proceedings and instead must be placed in standard removal proceedings under INA § 240.

27. The Trafficking Victims Protection Reauthorization Act of 2008 further mandates that unaccompanied alien children from non-contiguous countries be transferred to the care and custody of the Office of Refugee Resettlement and placed into removal proceedings, where they may seek relief and protection from removal. See 8 U.S.C. § 1232(a)(2), (a)(5).

28. Petitioner entered the United States as an unaccompanied minor and was formally released from ORR custody to a vetted family sponsor pursuant to federal statute. Exhibit That release terminated any inspection-related detention authority under INA § 235 and placed Petitioner squarely within the post-entry civil detention framework of INA § 236.

29. By continuing to treat Petitioner as subject to INA § 235 mandatory detention decades after his ORR release, Respondents disregard Congress's explicit statutory scheme for unaccompanied children and impermissibly resurrect a form of custody that the INA no longer authorizes.

30. The INA contains no provision allowing DHS or EOIR to reclassify a former unaccompanied alien child—long since released into the interior of the United States—as

subject to inspection-related mandatory detention. To the contrary, the statutory framework reflects Congress's intent to protect unaccompanied children from summary procedures and to ensure access to individualized adjudication and release determinations

31. Respondents' refusal to recognize Petitioner's statutory exclusion from § 235 detention violates the INA, contravenes the TVPRA, and results in Petitioner's unlawful detention without statutory authority.

LEGAL FRAMEWORK

32. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.

33. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an IJ. See 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally entitled to a bond hearing at the outset of their detention, see 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, see 8 U.S.C. § 1226(c).

34. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under § 1225(b)(2).

35. Last, the INA also provides for detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings, see 8 U.S.C. § 1231(a)–(b).

36. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).

37. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the *Illegal Immigration Reform and Immigrant Responsibility Act* (IIRIRA) of 1996, Pub. L. No. 104-–208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585.

Section 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

38. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 1226(a). See Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

39. Thus, in the decades that followed, most people who entered without inspection and were placed in standard removal proceedings received bond hearings, unless their criminal history rendered them ineligible pursuant to 8 U.S.C. § 1226(c). That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed "arriving" were entitled to a custody hearing before an IJ or other hearing officer. See 8 U.S.C. § 1252(a) (1994); see also H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

40. In Jennings v. Rodriguez, the Department of Homeland Security (DHS) explicitly acknowledged that individuals who have already entered the United States and are not apprehended within 100 miles of the border or within 14 days of entry are subject to discretionary detention under 8 U.S.C. § 1226(a), not mandatory detention under § 1225(b). During oral argument on November 30, 2016, then–Solicitor General Ian Gershengorn stated: "If they are not detained within 100 miles of the border or within 14 days... then they are under 1226(a) and not 1226(c)" and further clarified, in response to a question concerning "an alien who has come into the United States illegally without being admitted [and] who takes up residence 50 miles from the border," the Government responded, "The answer is

they are held under 1226(a) and that they get a bond hearing…" Transcript of Oral Argument at 7–8, Jennings v. Rodriguez, 583 U.S. ___ (2018) (No. 15 1204). DHS reiterated that such individuals "would be held under 1226(a)" and cited the administrative record to support that position. Id. These statements reflect DHS's prior litigation stance that § 1226(a) governs detention for noncitizens who have entered and are residing in the United States, a position directly contrary to the agency's current interpretation applying § 1225(b)(2)(A) to such individuals. Having prevailed in Jennings after taking this position, they should be estopped from taking the contrary position now simply because their political or litigation interests have changed. Estoppel in this case is necessary to preserve the predictability inherent in the rule of law and due process under the Fifth Amendment, as well as to protect the integrity of the judicial system.

41. On July 8, 2025, ICE, "in coordination with" DOJ, announced a new policy that rejected well-established understanding of the statutory framework and reversed decades of practice.

42. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission,"[1] claims that all persons who entered the United States without inspection shall now be subject to mandatory detention provision under § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended, and affects those who have resided in the United States for months, years, and even decades.

43. On September 5, 2025, the BIA adopted this same position in a published decision, *Matter of Yajure Hurtado*. There, the Board held that all noncitizens who entered

[1] *Available at* https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission.

the United States without admission or parole are subject to detention under § 1225(b)(2)(A) and are ineligible for IJ bond hearings.

44. Since Respondents adopted their new policies, several federal courts have rejected their new interpretation of the INA's detention authorities. Courts have likewise rejected *Matter of Yajure Hurtado*, which adopts the same reading of the statute as ICE. These courts have consistently held that § 1226(a), not § 1225(b)(2), governs the detention authority applicable in these cases. For example, courts in Massachusetts, Arizona, New York, Minnesota, California, and Nebraska have reached this conclusion. See: *Gomes v. Hyde*, No. 1:25-CV-11571-JEK (D. Mass. July 7, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB) (D. Ariz. Aug. 11, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH) (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE (D. Minn. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM (D. Mass. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF (N.D. Cal. Aug. 21, 2025); *Palma Perez v. Berg*, No. 8:25CV494 (D. Neb. Sept. 3, 2025).

45. These decisions reflect a clear judicial consensus, now binding nationally as to class members, that the government's reliance on § 1225(b)(2) is misplaced in cases involving those whose immigration status lawfully falls under § 1226(a).

46. Section 1226 therefore leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole.

47. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States and were not free to mingle with the general population after being free from official restraint. The statute's entire framework is premised on

inspections at the border of people who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

48. In addition to the general detention framework set forth above, Congress has enacted a separate and controlling statutory scheme governing the treatment, custody, and removal proceedings of unaccompanied alien children.

49. In the Trafficking Victims Protection Reauthorization Act of 2008, Congress expressly limited the application of expedited removal and mandatory detention under INA § 235 to unaccompanied alien children. Except in narrow circumstances involving certain contiguous-country nationals, unaccompanied alien children may not be placed in expedited removal proceedings under § 1225(b)(1). See 8 U.S.C. § 1232(a)(5)(D).

50. Instead, Congress mandated that unaccompanied alien children from non-contiguous countries be transferred to the care and custody of the Office of Refugee Resettlement and placed into standard removal proceedings pursuant to INA § 240. See 8 U.S.C. § 1232(a)(2), (a)(5). In those proceedings, unaccompanied children are afforded full procedural protections, including the opportunity to apply for relief and protection from removal.

51. This statutory framework reflects Congress's determination that unaccompanied children constitute a uniquely vulnerable population and should not be subjected to summary inspection-stage detention designed for individuals seeking admission at the border.

Consistent with that purpose, placement with a family sponsor following ORR custody is a central feature of the statute, not a discretionary accommodation.

52. Once an unaccompanied alien child is released from ORR custody into the interior of the United States, any inspection related detention authority under INA § 235 is exhausted. The INA contains no provision authorizing DHS or EOIR to later revive § 1225 detention authority over a former unaccompanied alien child who has been lawfully released pursuant to 8 U.S.C. § 1232.

53. Nothing in the INA permits DHS or EOIR to reclassify a former unaccompanied alien child—long since released into the United States and residing in the interior as perpetually subject to inspection-related mandatory detention. To the contrary, Congress's exclusion of unaccompanied alien children from expedited removal and § 235 detention reflects a deliberate limitation on executive detention authority.

54. Accordingly, where a former unaccompanied alien child is detained following arrest in the interior and placed into standard removal proceedings under INA § 240, the governing detention authority, if any, arises under INA § 236. Detention under § 1225(b)(2) in such circumstances is inconsistent with the statutory text, structure, and purpose of the INA as amended by the TVPRA.

FACTS

55. Petitioner Carlos Rene Leiva-Trochez is a citizen of Honduras. He entered the United States as a minor, traveling alone from Honduras to Texas in approximately 2003–2004. At the time of entry, Petitioner was approximately thirteen years old and had no parent or legal guardian present in the United States.

56. After his apprehension, Petitioner was designated an unaccompanied alien child and placed into the custody of the Office of Refugee Resettlement. Pursuant to federal law governing unaccompanied children, Petitioner was formally released from federal custody into the care of an adult family sponsor. Exhibit 2, ORR Interim Verification of Release.

57. Following his release from ORR custody, the former Immigration and Naturalization Service initiated standard removal proceedings against Petitioner. On or about August 2004, INS issued a Notice to Appear charging Petitioner as inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) and placing him in removal proceedings pursuant to 8 U.S.C. § 1229a. Exhibit 4, NTA. On August 24, 2005, an immigration judge ordered Petitioner removed in absentia after his sponsor withdrew support and ceased bringing him to immigration court. Exhibit 5, Order. That removal order was entered when Petitioner was about 16 years old.

58. Petitioner remained in the United States following the entry of the in absentia removal order, established long-term residence, and formed deep family ties. In December 2014, he married a United States citizen. The couple has 2 U.S. Citizen children together, born in 2009 and 2022.

59. On October 9, 2025, U.S. Citizenship and Immigration Services approved an I-130 Petition for Alien Relative filed on Petitioner's behalf by his U.S. citizen spouse under INA § 201(b). Exhibit 3, I-130 Approval Notice.

60. Based in part on the October 2025 approval of the I-130, an Immigration Judge subsequently reopened the Petitioner's removal proceedings to pursue an I-601A Waiver and Consular Processing. Petitioner is currently in active removal proceedings under Section 240 of the INA.

61. Petitioner is currently detained by Immigration and Customs Enforcement at the Stewart Detention Center in Lumpkin, Georgia. Exhibit 1, ICE Detainee Locator. Respondents have not set bond and have treated Petitioner as subject to mandatory detention.

62. Petitioner is not detained pursuant to 8 U.S.C. § 1226(c), 8 U.S.C. § 1225(b)(1), or 8 U.S.C. § 1231(a). Although DHS has detained Petitioner under the guise of 8 U.S.C. § 1225(b)(2), Petitioner entered the United States as an unaccompanied minor, was released from ORR custody into the interior of the country, and has long been subject only to standard removal proceedings under 8 U.S.C. § 1229a.

63. Despite binding statutory provisions and repeated federal court decisions holding that noncitizens in Petitioner's circumstances are detained under 8 U.S.C. § 1226(a) and entitled to consideration for release on bond, Respondents have continued to deny Petitioner access to a bond hearing. Immigration Judges at the Stewart Detention Center have declined jurisdiction, citing agency directives and the absence of further guidance from EOIR or the Eleventh Circuit. Respondents' continued detention of Petitioner violates the INA.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

a. Assume jurisdiction over this matter;

b. Issue a writ of habeas corpus requiring that within one day, Respondents release Petitioner;

c. Alternatively, issue a writ of habeas corpus requiring Respondents to release Petitioner unless they provide a bond hearing under 8 U.S.C. § 1226(a) within seven days;

d. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act (EAJA), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and

e. Grant any other and further relief that this Court deems just and proper.

DATED this 14th day of April, 2026

/s/ Joshua McCall, Esq.

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